IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9142 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges? : YES

1,2: YES; 3,4: NO; 5:YES, May be circulated to all courts of criminal jurisdiction in the State.

DINESHKUMAR VASUDEV NAYAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9142 of 2002

MR NIRAV KAUSHIKBHAI MAJMUDAR for Petitioner No.1

MR KP RAWAL APP for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 04/03/2003

ORAL JUDGEMENT

1. Rule. Learned A.P.P., Mr.Rawal, waives service for the respondent State.

2. This application for bail under section 439 of the Code of Criminal Procedure is filed by the petitioner, who is stated to be in jail since 24.6.2002 pursuant to the offences punishable under sections 408, 409, 470, 471, 477-A read with section 34 of the Indian Penal Code, which were reported by an officer of the Cooperation Department of the State Government. Seven office-bearers of a Cooperative Society were named in the complaint dated 10th March, 1989 which was treated as the F.I.R. The petitioner had, along with another accused person, approached the Sessions Court with an application for bail under section 439 of the Cr.P.C. and that application was rejected by a reasoned order on 03rd July, 2002. Thereafter, another application being Criminal Misc. Application No.284 of 2002 was also filed by the petitioner and that application was also rejected by the learned Additional Sessions Judge on 30th November, 2002.

3. It has been noted by the Sessions Court that the petitioners were alleged to have misappropriated the sum of approximately Rs.36 lakhs by fraud and forgery and in fact a judgment and decree is passed against one of the accused persons and that accused person had also admitted his part of the liability even as real repayment is not stated to have been made. It was also noted that an earlier case involving embezzlement of Rs.13 lakhs is also pending against the petitioner and other co-accused. Having regard to the seriousness of the offences and prima facie finding of involvement of the petitioner, the learned Sessions Judge also recorded that the applicant appeared to be a habitual offender.

4. The present application was pressed mainly on the ground of parity, without the findings regarding prima facie case being even assailed. Learned counsel Mr.Majmudar vehemently argued that the main person accused in the offences, namely, Mr.Ashokkumar Laxmiprasad Thakar, who has admitted his liability as aforesaid, was released on bail by order dated 21st November, 2002 of this Court (Coram: Hon'ble Mr.Justice C.K.Buch) in Criminal Misc. Application No.7332 of 2002, and another co-accused, namely, Mr.Govindpuri Jethapuri Goswami, was ordered to be released even earlier on 29th August, 2002 by an order of this Court (Coram: Hon'ble Mr.Justice S.D.Dave) in Criminal Misc. Application No.4380 of 2002. It was, on that basis, submitted that denial of relief to the petitioner would be violative of the principle underlying Article 14 of the Constitution. The Division Bench judgment of the Allahabad High Court

in NANHA son of NABHAN KHA v. STATE OF U.P. [1993 Cr.L.J. 938] was cited in support of the submission that, for the sake of judicial uniformity and non-discrimination, it was essential that if the High Court grants bail to one co-accused, it should also grant bail to another co-accused whose case stands on the same footing. It is also observed therein that judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all the judicial discretion cannot be arbitrarily exercised. Moreover, high aspirations of the public from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi-judicial authorities have not only to serve the public but also to create confidence in the minds of the public. It is, however, also observed in the same judgment that all the accused of a case always do not stand on the same footing. While considering bail of different accused, the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. At the same time, if there is no real distinction between the individual case of accused, the principle of parity comes into play and if bail is granted to one accused, it should also be granted to the other accused whose case stands on identical footing. Nevertheless the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and strait jacket to grant bail automatically. There may be case which may require an exception; where a judge may not simply take a different view from the judge who granted bail earlier to a co-accused but where the conscience of the judge revolts in granting bail. In such a situation, the judge may choose to depart from the rule, recording his reasons. However, such cases would be very few.

5. It was fairly conceded that the two other co-accused persons, with whom parity was claimed, were released by orders which did not contain any reasons at the request of the parties. Therefore, there is no means of verifying or finding out whether the applicant's case stands on the same footing or not. Apart from that, parity cannot be pressed only on the basis of similarity in the role ascribed to the different accused persons since decision on a bail application depends on several other factors, including the personal circumstances of the accused person and his record of behaviour before and after commission of the offence. Therefore, strictly speaking, the rule of parity can be applied only in cases where not only the role in the particular offence is

found to be similar but the circumstances of the petitioner and other relevant factors are broadly at par. Of course, as against a particular accused person, the lack of a good prima facie case of involvement in a serious offence may by itself be enough to entitle him to his liberty and no question of parity in such a case would arise.

6. In the facts of the present case, it was clear on record that the so-called main accused, i.e. Mr.Ashokkumar Laxmiprasad Thakar, has admitted full responsibility for the monies which were allegedly misappropriated as far back as in the years 1981 to 1983. As against that, even in reply to a specific query, the learned counsel for the present petitioner expressed his inability to make any statement in that regard. The nature of allegations against the petitioner is such that the funds of an employees' cooperative society were systematically siphoned away by collusion and cooperation of some of its office-bearers and specific amounts were alleged to have been embezzled by the particular accused persons. Prima facie, the other accused, namely, Mr.Govindpuri Jethapuri Goswami, was found to have misappropriated in such fashion a total sum of Rs.1,38,024.60 ps. whereas, the other co-accused, namely, Mr.Ashokkumar Laxmiprasad Thakar, and the present applicant, were, prima facie, found to have, between them, misappropriated a total sum exceeding Rs.22 lakhs. This was in addition to another case of embezzlement of Rs.13 lakhs which case also is stated to be still pending against the petitioner in the trial court. Thus, the picture that emerges is that of systematic and sophisticated siphoning of money, prolonged and unexplained delay in investigation and quick orders of release on bail for the co-accused, to be followed by prolonged litigations. Although no blood flows in this kind of financial felonies, the effects of such offences and proceedings on the society at large are pervasive and deleterious. Pathetic plight and chagrin of the people whose hard-earned savings and funds were allegedly siphoned away in cynical disregard of the law could very well be imagined. If one can have the personal liberty as well as the ill-gotten money by keeping aside a part of it for influencing investigation or tampering evidence and financing prolonged litigations, respect for law and justice will be the ultimate casualty creating a void to be filled by anarchy. It would be reasonable not to exercise in such cases the judicial discretion in favour of the accused during pendency of the proceedings.

7. As recently held by the Supreme Court in STATE OF

MAHARASHTRA v. RITESH [2001 Cr.L.J. 1695], the High Court need not venture into referring the merits of the case for prematurely holding that there was no material on record to show that the respondent was guilty. It is also held by the Supreme Court in RAM PRATAP YADAV v. MITRA SEN YADAV [2001 AIR SCW 4851] that the High Court should keep in mind, while hearing the application for bail, the factum of the prayer having been rejected by the Sessions Court and the reasons therefor expressly set out in the order of the Sessions Court. It is specifically ordained that the order of the High Court, howsoever brief it may be, should make it appear that the High Court while forming opinion on prayer for bail was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court. And, it is also recently observed by the Supreme Court in MANSAB ALI v. IRSAN AND ANOTHER [2002 AIR SCW 5391] that since the jurisdiction to grant bail is discretionary, it is required to be exercised with great care and caution by balancing right of liberty of an individual and interest of society in general. In granting or refusing bail, the Courts are required to indicate, may be very briefly, the reasons for grant or refusal of bail. The jurisdiction has not to be exercised in a casual and cavalier fashion.

8. It is seen that neither a parity on factual basis could be established by the petitioner nor could there be found any reason whatsoever to release the present applicant on bail. Therefore, with greatest respect to the aforesaid orders of this court releasing the other co-accused persons on bail and following the aforementioned judgments of the Supreme Court as also the observations of the Division Bench of the Allahabad High Court, this application is rejected. Rule is discharged with no order as to costs. Sd/-

(D.H.Waghela,J.)

(KMG Thilake)